

1 SNELL & WILMER L.L.P.  
Philip J. Graves (SBN 153441)  
2 pgraves@swlaw.com  
Greer N. Shaw (SBN 197960)  
3 gshaw@swlaw.com  
350 South Grand Avenue, Suite 2600  
4 Two California Plaza  
Los Angeles, California 90071  
5 Telephone: (213) 929-2500  
Facsimile: (213) 929-2525

6 Attorneys for Plaintiff  
7 James R. Glidewell Dental Ceramics, Inc.  
d/b/a Glidewell Laboratories

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL  
CERAMICS, INC.,

13 Plaintiff,

14 vs.

15 KEATING DENTAL ARTS, INC.,

16 Defendant.

Case No. SACV11-01309-DOC(ANx)

**JAMES R. GLIDEWELL DENTAL  
CERAMICS, INC.'S NOTICE OF  
MOTION AND MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AS TO KEATING'S INVALIDITY  
DEFENSE AND COUNTERCLAIM**

Hearing

Date: December 17, 2012

Time: 8:30 a.m.

Ctrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013

Jury Trial: February 26, 2013

18 AND RELATED  
19 COUNTERCLAIMS.

PLEASE TAKE NOTICE that on December 17, 2012, at 8:30 a.m., or as soon thereafter as counsel may be heard in Courtroom 9D of the above-entitled court, plaintiff and counter defendant James R. Glidewell Dental Ceramics, Inc. (“Glidewell”) will, and hereby does, move the Court for an order under Rule 56 of the Federal Rules of Civil Procedure as follows:

**1. For partial summary judgment on defendant and counterclaimant Keating Dental Arts, Inc.’s (“Keating”) on Defendant’s Fourth Counterclaim for Cancellation of Trademark Registration No. 3,739,663.**

The ground for partial summary judgment is that (a) Glidewell’s BruxZir mark, Registration No. 3,739,663, is presumed to be suggestive and therefore distinctive; (b) the evidence conclusively establishes that the BruxZir mark is suggestive and therefore distinctive; (c) the evidence conclusively establishes that the BruxZir mark, if descriptive, has attained secondary meaning; (d) Keating cannot carry its burden to prove that the BruxZir mark is generic; (e) Keating cannot carry its burden to prove that the BruxZir mark is descriptive without secondary meaning.

**2. For partial summary judgment on Keating’s First Affirmative Defense for invalidity of Trademark Registration No. 3,739,663.**

The ground for partial summary judgment is that (a) Glidewell’s BruxZir mark, Registration No. 3,739,663, is presumed to be suggestive and therefore distinctive; (b) the evidence conclusively establishes that the BruxZir mark is suggestive and therefore distinctive; (c) the evidence conclusively establishes that the BruxZir mark, if descriptive, has attained secondary meaning; (d) Keating cannot carry its burden to prove that the BruxZir mark is generic; (e) Keating cannot carry its burden to prove that the BruxZir mark is descriptive without secondary meaning.

This motion is based on this notice of motion and motion; the concurrently-filed Memorandum of Points and Authorities, Statement of Uncontroverted Facts

1 and Conclusions of Law, Appendix of Evidence, the pleadings and papers on file in  
2 this action, and any argument received by the Court at the time of any hearing on  
3 this motion.

4 Dated: November 19, 2012

SNELL & WILMER L.L.P.

5  
6  
7 By: s/Greer N. Shaw

Philip J. Graves

8 Greer N. Shaw

9 Attorneys for Plaintiff

10 James R. Glidewell Dental Ceramics, Inc. dba

11 GLIDEWELL LABORATORIES

12 16161155.1  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

***Glidewell Laboratories v. Keating Dental Arts, Inc.***  
**United States District Court, Central, Case No. SACV11-01309-DOC (ANx)**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2012, I electronically filed the document described as **JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO KEATING'S INVALIDITY DEFENSE AND COUNTERCLAIM** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

David G. Jankowski  
Jeffrey L. Van Hoosear  
Lynda J Zadra-Symes  
Knobbe Martens Olson and Bear LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614

**Attorneys for Defendant Keating  
Dental Arts, Inc.**  
Tel: (949) 760-0404  
Fax: (949) 760-9502

Jeffrey.vanhoosear@kmob.com  
David.jankowski@kmob.com  
Lynda.zadra-symes@kmob.com  
litigation@kmob.com

Dated: November 19, 2012

SNELL & WILMER L.L.P.

By: s/Philip J. Graves

Philip J. Graves  
Greer N. Shaw

Attorneys for Plaintiff  
James R. Glidewell Dental Ceramics, Inc.  
dba GLIDEWELL LABORATORIES

16139994.1

Certificate of Service  
SACV11-01309-DOC (ANx)

SNELL & WILMER  
L.L.P.

350 SOUTH GRAND AVENUE  
SUITE 2600  
TWO CALIFORNIA PLAZA  
LOS ANGELES, CALIFORNIA 90071